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Executive Director

22

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DEC - 4 2007

DATE: DECEMBER 4, 2007

DOCKET NO: W-01431A-07-0547

TO ALL PARTIES:

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Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

VALLE VERDE WATER COMPANY
(EMERGENCY RATES/FINANCE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 13, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 18, 2007 and DECEMBER 19, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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AZ CORP COMMISSION
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 VALLE VERDE WATER COMPANY FOR
10 IMPLEMENTATION OF AN EMERGENCY
11 SURCHARGE AND REQUEST FOR ACCESS TO
12 WATER INFRASTRUCTURE FINANCE
13 AUTHORITY FUNDS.

DOCKET NO. W-01431A-07-0547

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING:

November 15, 2007

12 PLACE OF HEARING:

Tucson, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

14 IN ATTENDANCE:

Commissioner William A. Mundell
Commissioner Kristen K. Mayes

15 APPEARANCES:

16 Steve Wene, on behalf of Southwest Utility
17 Management, interim manager of Valle Verde
18 Water Co.; and

19 Charles Hains, Staff Attorney, Legal Division on
20 behalf of the Utilities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. On September 24, 2007, Southwest Utilities Management ("SUM"), the interim
28 manager of Valle Verde Water Co., ("Valle Verde" or "Company") filed an application on behalf of
Valle Verde for emergency rate relief and for authority to access the small water system fund
administered by the Water Infrastructure Finance Authority ("WIFA") pursuant to A.R.S. § 49-355.

1 2. By Procedural Order dated October 11, 2007, the Commission convened a Procedural
2 Conference on October 16, 2007, to discuss procedures and to schedule a hearing.

3 3. On October 16, 2007, SUM filed additional information in support of its application,
4 describing some of the problems affecting the system and showing how it calculated the need for its
5 proposed emergency surcharge of \$1.73 per 1,000 gallons of water sold.

6 4. By Procedural Order dated October 17, 2007, the matter was set for a hearing on
7 November 15, 2007, at the Commission's Tucson office. The October 17, 2007 Procedural Order
8 provided a form of notice and required SUM to have the notice published in a newspaper of general
9 circulation within Valle Verde's service area and to post the notice in a public area within the service
10 area.¹

11 5. On November 16, 2007, SUM filed affidavits of publication, indicating that it had the
12 notice of the hearing published in *The Nogales International* on October 26, 2007, and November 2,
13 2007.

14 6. On November 9, 2007, the Commission's Utility Division Staff ("Staff") filed its Staff
15 Report, recommending approval of the requested emergency surcharge.

16 7. A hearing on the emergency rate request was held on November 15, 2007, at the
17 Commission's Tucson office. SUM, represented by counsel, offered the testimony of Ms. Bonnie
18 O'Conner, a Vice President of SUM, and Mr. Edward Geiser, a registered professional engineer
19 employed by Engineering & Environmental Consultants. Mr. Marvin Millsap testified on behalf of
20 Staff.

21 8. Valle Verde is an Arizona class D utility engaged in the business of providing potable
22 water service to approximately 800 customers in an area that is adjacent to and partially within the
23 northern city limits of Nogales, Arizona, in Santa Cruz County.

24 9. The Commission granted Valle Verde a Certificate of Convenience and Necessity
25 ("CC&N") in Decision No. 28887 (April 27, 1955).

26 10. Valle Verde's current rates were set by Decision No. 59554 (April 1, 1996).

27
28 ¹ A copy of the Procedural Order was mailed to the *Nogales International*, a newspaper of general circulation within
Valle Verde's service area which had run news stories about the Company in the past.

1 11. Valle Verde is currently owned by the Estate of William F. Randall, who had operated
2 the system for many years prior to his death.

3 12. Upon Mr. Randall's death, the system fell into financial and operation disarray and
4 became non-compliant with several Arizona Department of Environmental ("ADEQ") Rules. ADEQ
5 issued two Notices of Violation to Valle Verde on June 18, 2007, for exceeding the Maximum
6 Contaminant Level ("MCL") on three of its four active wells, failing to have a certificated operator,
7 failing to obtain an Approval to Construct for an interconnection with the City of Nogales, as well as
8 various monitoring failures. ADEQ has determined that the Valle Verde system is not delivering
9 water that meets the water quality standards required by the Arizona Administrative Code, Title 18,
10 Chapter 4.

11 13. On August 29, 2007, the Commission issued Decision No. 69882, an Order to Show
12 Cause ("OSC"), ordering Valle Verde to answer allegations concerning the violation of Commission
13 Rules and directing Staff to appoint an interim manger to operate the system. In its Complaint, Staff
14 alleged: (1) that Valle Verde failed to provide potable water to the customers' point of connection in
15 violation of A.A.C. R14-2-407(A); (2) that Valle Verde failed to supply a satisfactory and continuous
16 level of service in violation of A.A.C. R14-2-407(C); (3) that the equipment and facilities of Valle
17 Verde are inadequate and insufficient in violation of A.R.S. § 40-321(A); (4) that Valle Verde
18 violated A.A.C. R14-2-407(E) by providing water at a pressure lower than 20 pounds per square inch
19 to some customers; and (5) that Valle Verde violated A.A.C. R14-2-410(A)(3) by discontinuing
20 water services to customers for non-payment of City of Nogales sewer bills.²

21 14. The Commission entered into an agreement with SUM to act as the interim manager
22 of Valle Verde. SUM has been operating the system as interim manager, pursuant to an agreement
23 with the Commission, since September, 2007.

24 15. The Company operates two water systems that are located on opposite sides of
25 Interstate 19 ("I-19"), and which are not interconnected. Although the Company has ten wells, not all
26 of them are on-line and operating or connected to the main distribution systems. The larger of the

27 ² At the October 16, 2007 Procedural Conference, Staff recommended that with the appointment of the interim manager,
28 no further immediate action on the OSC is required, as the interim manager is working to resolve the alleged violations
that lead to the OSC.

1 two systems is served by three wells – Well Nos. 2, 1, and 4, with two additional wells—Well Nos. 7
2 and 8, having been off-line and non-operational for some time. This portion of the system which is
3 east of I-19, serves approximately 700 connections.

4 16. Well Nos. 2, 1 and 4 are contaminated with tetrachloroethylene (“PCE”) and are
5 consequently out of compliance with ADEQ Rules on account of excessive Volatile Organic
6 Compounds (“VOCs”). Well Nos. 2 and 1 are off-line, and Well No. 4 is on-line for non-potable
7 purposes only. To provide water to those customers formerly served by Well Nos. 1 and 2, Valle
8 Verde has established a connection with the City of Nogales and purchases water from the City. The
9 Company provides bottled water for drinking purposes to the approximate 12 customers served by
10 Well No. 4.

11 17. The system on the west side of I-19, with approximately 70 connections, is served by
12 Well Nos. 5 and 6. Well Nos. 5 and 6 do not suffer from VOCs, but are affected by arsenic. Well
13 No. 5 reported an arsenic concentration of 9 µg/l and Well No. 6 reported an arsenic concentration of
14 13 µg/l in recent tests. The U.S. Environmental Protection Agency (“EPA”) has established an
15 arsenic maximum contaminant level (“MCL”) in drinking water of 10 µg/l. Even though Well No. 5
16 is below the allowed MCL, it is approaching the limit and most likely does not have sufficient
17 capacity to allow the Company to blend the two sources to achieve long-term compliance with the
18 arsenic MCL.

19 18. In addition, the Company’s Well No. 3 does not have any VOC or arsenic problems,
20 but it is not part of the main system, and only serves a stand-alone pocket of approximately 20
21 connections. Well No. 9 currently serves a tomato packing plant, and is contaminated with VOCs
22 and is not approved as a potable source.

23 19. Mr. Geiser testified that the ADEQ superfund and Water Quality Assurance Revolving
24 Fund (“WQARF”) are assessing having the area declared a superfund site. Mr. Geiser testified there
25 may be WQARF funds available to assist with cleaning up the VOCs. The Company will likely look
26 to WIFA for funding to address the arsenic problem.

27 20. Valle Verde is located in Arizona Department of Water Resources’ (“ADWR”) Santa
28 Cruz Active Management Area (“AMA”). The Company is in compliance with the AMA’s

1 monitoring and reporting requirements.

2 21. Between September 17, 2007, and November 5, 2007, Valle Verde has had to
3 purchase 14,030,400 gallons of water from the City of Nogales at a cost of \$35,471.61.

4 22. Based on its currently approved rates, for the period September 17, 2007 through
5 November 5, 2007, Valle Verde was been able to charge its end users \$17,351.49 for the water
6 purchased from the City of Nogales, resulting in a deficit of \$18,120.12 from water purchases alone.

7 23. From January 2007, until September 2007, the Company had purchased water
8 expenses of \$68,744.

9 24. The Company reports that currently it owes the City of Nogales approximately \$36
10 thousand for past water purchases.

11 25. The PCE contaminated wells and the resultant need to purchase water from the City of
12 Nogales is causing a great strain on the Company's financial condition, but in addition, the Valle
13 Verde system is aging and suffers from numerous infrastructure deficiencies and is incurring frequent
14 and substantial repair costs.

15 26. SUM states that Valle Verde currently has Accounts Payable totaling approximately
16 \$120,000.

17 27. SUM made its best determination of the revenues and expenses of the Company from
18 January through September 2007, and projected revenues and expenses for the remainder of the year.
19 SUM estimates total annual revenue for the year 2007 to be \$233,796 and total expenses of \$399,006,
20 resulting in an operating deficit of \$165,210. Based on projected annual water sales of 100,418,000
21 gallons, the Company is requesting an emergency surcharge of \$1.73 per 1,000 gallons of water sold.
22 Based on historic sales, the requested emergency surcharge would result in additional annual revenue
23 of \$173,723.14.

24 28. The Company's requested surcharge would increase the commodity charge for 1,001
25 to 8,000 gallons of usage to \$3.03 per 1,000 gallons and increase the commodity charge for more
26 than 8,000 gallons of usage to \$3.20 per 1,000 gallons. Based on an average usage of 8,190 gallons,
27 with the surcharge, the typical residential customer's monthly bill would increase from \$21.67 to
28 \$35.83, an increase of \$14.16, or 65.34 percent.

1 29. SUM states that its priority for the use of the additional revenues is to keep the system
2 operating by making necessary repairs, and to remediate the VOC problem. The Company believes
3 that once the VOCs are addressed, the affected wells should have adequate production capacity to
4 eliminate water purchases from the City of Nogales. If there are any funds remaining after necessary
5 repairs and correcting the water quality problems, SUM states that it would apply the funds to paying
6 down the outstanding accounts payable. SUM believes that remedying the arsenic levels in Well
7 Nos. 5 and 6 is a lower priority because it does not present an immediate threat to the health and
8 safety of the end users.

9 30. Valle Verde's engineers have preliminarily studied ways to treat the VOC and arsenic
10 problems. Because the east and west systems are on opposite sides of I-19, interconnecting them to
11 use blending to remedy either the VOC or arsenic problems appears to be prohibitively expensive.
12 The Company has investigated different means to treat the VOCs, including interconnection with the
13 western system, interconnecting with Well No. 3, and upgrading that well site to include storage and
14 a booster pump to provide a means to supply the main system; drilling a new well that would
15 penetrate below the VOC contaminated aquifer; and installing wellhead treatment facilities to
16 remove the VOCs at one or more of the wells. The Company appears to favor wellhead treatment as
17 the most cost-effective method to deal with the VOC contamination.

18 31. The Company discussed two methods for treating the VOCs at the wellhead. One
19 method involves utilizing an air stripper unit, and the other involves using granulated activated
20 carbon absorption. The removal plan would involve the installation of a 140,000 gallon storage tank
21 and a 250 gpm booster pump station. The Company has identified Well Nos. 2 and 9 as possible
22 sites for the treatment facilities. The Company wants to treat the VOCs at two sites to provide for
23 redundancy. However, currently, the Company does not own Well No. 9, and is in negotiations about
24 acquiring this site. The Company provided information to Staff that indicated the cost of the air
25 stripper facilities would be approximately \$380,000 and the activated carbon unit would cost
26 approximately \$550,000.

27 32. At the hearing, the consulting engineer, Mr. Geiser, testified that the initial costs of
28 the two methods of wellhead VOC treatment would have similar initial investment costs, but that the

1 operating costs of the air stripping method would be less. At that time he indicated that his very
2 preliminary estimate of the initial investment to treat the VOCs would be approximately \$300,000.
3 Mr. Geiser believes that once agreement is reached with WQARF, the Company could begin treating
4 the VOCs in about five months.

5 33. The Company preliminarily estimates that treating the arsenic that plagues the western
6 system, would cost approximately \$250,000.

7 34. Ms. O'Conner testified that without the requested emergency surcharge Valle Verde
8 would not be able to continue operating.

9 35. Staff concurs that the funds generated from the surcharge are needed for the Company
10 to consistently supply water when needed.

11 36. For the period prior to SUM's involvement, Valle Verde's books and records are in
12 disarray and incomplete.

13 37. SUM expects to file a permanent rate application and finance application on behalf of
14 Valle Verde as soon as it is able to gather sufficient and adequate records to support the request. The
15 Company expects to file a finance application to seek authority to borrow funds from WIFA for
16 system upgrades and for arsenic remediation equipment.

17 38. Staff recommends approval of the emergency rate increase as requested by the
18 Company. Staff further recommends that:

19 (a) the emergency rates be interim;

20 (b) the Company be directed to file within 30 days of the effective date of this Order, a
21 revised rate schedule reflecting the emergency rate increase with Docket Control, as a compliance
22 item in this docket;

23 (c) the Company notify its customers of the revised rates, and their effective date, in a
24 form acceptable to Staff, by means of an insert in the Company's next regularly scheduled billing;

25 (d) the Company file a full rate case no later than April 30, 2009, using a test year
26 ending December 31, 2008;

27 (e) the interim rates be subject to refund pending the decision of the permanent rate
28 case and that the Company be required to post a performance bond, or similar financial instrument, of

1 \$10.00 prior to implementing the emergency rate increase authorized in this proceeding;

2 (f) the Company file a curtailment tariff as soon as possible but no later than 45 days
3 after the effective date of the final Decision and Order in this matter. The tariff shall be docketed as a
4 compliance item under this docket number for the review and certification by Staff. Staff further
5 recommends that the tariff shall generally conform to the sample tariff found on the Commission web
6 site. Staff recognizes that the Company may need to make minor modifications according to its
7 specific management, operational, and design requirements as necessary and appropriate; and

8 (g) the Company select the air strip method to comply with the PCE removal
9 requirement.

10 39. Ms. O'Conner testified that the Company has already filed a curtailment tariff for
11 Staff review.

12 40. The death of the Company's owner/operator, the substantial monthly operating deficit
13 and the large expenditures required on repairs, in addition to the investment needed to treat the VOCs
14 have created an emergency situation. The Company is unable to meet its monthly expenses as they
15 become due. Without additional revenue in the short-term, Valle Verde likely will not be able to
16 continue operating. We find that the Company's financial and operational conditions are such that its
17 ability to maintain service pending a formal rate determination is in serious doubt and constitutes an
18 emergency under Arizona law.

19 41. Under the circumstances reported herein, the Company's proposed surcharge is
20 reasonably calculated to allow the Company to continue providing service.

21 42. The financial information presented in this docket concerning treatment options for the
22 VOCs is preliminary and we do not find it prudent or necessary to order the Company to employ a
23 particular method for treating the VOCs. SUM will be working with WQARF to obtain the funds
24 necessary to install PCE treatment facilities, and may be filing a finance application with respect to
25 this issue. SUM should continue to keep Staff apprised of the status of its discussions with ADEQ
26 and WQARF concerning its PCE remediation efforts.

27 43. The interim manager of Valle Verde is facing the need to maintain an aging system
28 that is experiencing a significant number of breakdowns and requires substantial upgrades. We find

1 that SUM, as interim manager of Valle Verde, has demonstrated that it requires immediate financial
2 assistance to make repairs and rehabilitate the Valle Verde system in order to avoid an interruption in
3 water service to Valle Verde's end users. We believe that SUM meets the criteria to access the small
4 water system fund administered by WIFA pursuant to A.R.S. § 49-355.

5 CONCLUSIONS OF LAW

6 1. Valle Verde is a public service corporation pursuant to Article XV of the Arizona
7 Constitution and ARS §§ 40-250 and 40-251.

8 2. SUM is the interim manager of Valle Verde pursuant to authority granted by the
9 Commission.

10 3. The Commission has jurisdiction over Valle Verde, SUM, as interim manager, and the
11 subject matter of the application.

12 4. Notice of the application and hearing was provided in accordance with the law.

13 5. Valle Verde is facing an emergency within the definition set forth in Attorney General
14 Opinion No. 71-17.

15 6. SUM requires the assistance of the small water system fund administered by WIFA
16 pursuant to A.R.S. § 49-355 to avoid an interruption in water service within the Valle Verde service
17 area.

18 7. The emergency rate increase as determined herein is just and reasonable on an interim
19 basis and should be implemented.

20 8. The recommendations set forth in Findings of Fact No. 38, as modified herein, are
21 reasonable and should be adopted.

22 ORDER

23 IT IS THEREFORE ORDERED that Valle Verde Water Company's application for an
24 emergency interim surcharge of \$1.73 per 1,000 gallons, as described herein is approved.

25 IT IS FURTHER ORDERED that on or before December 31, 2007, Valle Verde Water
26 Company shall file revised tariffs consistent with the findings herein that allow for a \$1.73 per 1,000
27 gallons interim emergency surcharge as a separate line item on the bill.

28 IT IS FURTHER ORDERED that the interim emergency surcharge shall become effective on

1 January 1, 2008.

2 IT IS FURTHER ORDERED that Valle Verde Water Company shall mail notice of the
3 approved interim emergency surcharge to its customers, in a form and manner acceptable to Staff,
4 within ten (10) days of the effective date of this Decision.

5 IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject
6 to refund pending resolution of the required permanent rate case.

7 IT IS FURTHER ORDERED that Valle Verde Water Company shall file an application for a
8 permanent rate increase no later than April 30, 2009, based on a year end 2008 test year. Valle Verde
9 Water Company may file a permanent rate case sooner than March 31, 2009, if it has sufficient
10 information to support such filing.

11 IT IS FURTHER ORDERED that Valle Verde Water Company shall obtain a performance
12 bond, or other comparable financial instrument in the amount of \$10, and shall provide the original to
13 the Commission's Business Office for safekeeping and file copies with the Commission Docket
14 Control as a compliance item in this docket prior to charging the interim surcharge.

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1 IT IS FURTHER ORDERED that Southwest Utilities Management is authorized to file an
2 application with the Water Infrastructure Finance Authority for access to the small water systems
3 fund.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this ____ day of _____, 2007.

17
18 DEAN S. MILLER
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22
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1 SERVICE LIST FOR: VALLE VERDE WATER COMPANY

2 DOCKET NO.: W-01431A-07-0547

3

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